

DEVELOPMENT AGREEMENT

ADOPTED 6/9/88

BETWEEN

INCUBATOR ASSOCIATES

AND

THE BOSTON REDEVELOPMENT AUTHORITY

This Agreement is made this _____ day of _____, 1987,
by and between INCUBATOR ASSOCIATES, a Massachusetts general
partnership, (the "Developer") and the BOSTON REDEVELOPMENT
AUTHORITY, a public body politic and corporate organized under
Chapter 121B of the Massachusetts General Laws (the "BRA").

Preliminary Statement

The City of Boston, a Massachusetts municipal corporation (the
"City"), has received funding approval in the amount of Seven
Hundred and Sixty-One Thousand Dollars (\$761,000) under Section
119 of the Housing and Community Development Act of 1974 (Public
Law 93-383), as amended, which authorized the Urban Development
Action Grant ("UDAG") program to assist distressed cities in
revitalizing their economic bases and reclaiming deteriorated
neighborhoods. The City has accordingly entered into the Revised
UDAG Grant Agreement executed by HUD on September 8, 1986 and by
the City on September 15, 1986 (the "UDAG Grant Agreement"),
pursuant to which HUD shall advance the Seven Hundred and
Sixty-One Thousand Dollars (\$761,000) of UDAG grant funds (the
"UDAG Grant Funds") to the City. The City has further entered
into a Transfer Agreement with the BRA dated _____ (the
"Transfer Agreement"), pursuant to which the City will transfer

the UDAG Grant Funds to the BRA for administration. The grant shall be used for the Building 36 project (the "Project") consisting of the rehabilitation of Building 36 located in the Charlestown Navy Yard into office and retail space and the construction of public safety park improvements in Shipyard Park adjacent to Building 36.

In order to complete the Building 36 Project and create new employment opportunities in the City of Boston, Developer shall beginning December 27, 1984 rehabilitate Building 36 located in the Charlestown Navy Yard and the BRA shall construct the public safety park improvements in Shipyard Park adjacent to Building 36. Developer will have expended, at or prior to completion of the Project, not less than Five Million, Seven Hundred and Five Thousand and Two Hundred and Seventy-Four Dollars (\$5,705,274) on the Project. It is anticipated that the Building 36 Project will create after December 27, 1984 one hundred twenty-two (122) new permanent jobs.

In consideration of the foregoing and the mutual promises contained in this Development Agreement and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Developer and the BRA agree as follows:

Section 1: Definitions

For purposes of this Development Agreement, the following terms shall have the meanings ascribed to them below:

- (a) "Application" shall mean the UDAG Application as defined in the UDAG Grant Agreement.

- b) "BRA" shall mean the Boston Redevelopment Authority, a public body politic and corporate organized under Chapter 121B of the Massachusetts General Laws, with offices at One City Hall Square, Boston, Massachusetts 02201.
- c) "BRA's Activities" shall mean those activities of the Project to be carried out by the BRA, which activities are described in Section 3 of this Development Agreement.
- d) "City" shall mean the City of Boston, Massachusetts.
- e) "Developer" shall mean Incubator Associates, a Massachusetts general partnership with Bernard Goldhirsh and Jerome Rappaport as General Partners and a mailing address of One Longfellow Place, Boston, Massachusetts 02114, c/o Jerome Rappaport.
- f) "Developer's Activities" shall mean those activities of the Project to be carried out by the Developer, which activities are described in Section 2 of this Development Agreement.
- g) "Development Agreement" shall mean this Development Agreement between the BRA and the Developer.
- h) "HUD" shall mean the United States Department of Housing and Urban Development.
- i) "New Permanent Job" shall mean a position that meets the following criteria:
- (i) a position that is created as a result of the Project and is expected to exist for at least two (2) years beyond the completion of the Project;

and

- (ii) one (1) permanent job is equal to one person working forty (40) hours per week or the number of hours in a full-time standard work week, or two (2) or more part-time persons whose combined working hours per week are equal to forty (40) hours or the number of hours in a full-time standard work week.

- (j) "New Permanent Jobs for Low- and Moderate-Income Persons" shall mean the New Permanent Jobs filled by individuals who, prior to this employment, had an income not exceeding the applicable income limit for eligibility for assistance under the HUD Lower Income Rental Assistance (Section 8) program.
- (k) "New Permanent Jobs for Minorities" shall mean the New Permanent Jobs filled by the racial or ethnic groups identified in the OMB Directive No. 15, 05/12/77, rev. exhibit F, OMB Circular No. A-46.
- (l) "Project" shall mean the rehabilitation of Building 36 located in the Charlestown Navy Yard as more fully described in Section 2 of this Development Agreement and the construction of public safety park improvements in Shipyard Park adjacent to Building 36 in the Charlestown Navy Yard as more fully described in Section 3 of this Development Agreement.
- (m) "Project Site" shall mean the land on which Building 36 is situated in the Charlestown Navy Yard.

- (n) "Project Improvements" shall mean the buildings, fixtures, and all related or appurtenant structures and facilities constructed, rehabilitated, renovated, or developed by the Developer as part of the Project.
- (o) "Secretary" shall mean the Secretary of Housing and Urban Development or any other official of HUD to whom the Secretary has delegated authority to act with respect to matters covered by the UDAG Grant Agreement.
- (p) "Transfer Agreement" shall mean the Transfer Agreement between the City and the BRA executed on _____.
- (q) "UDAG Grant" shall mean the grant of Seven Hundred and Sixty-One Thousand Dollars (\$761,000) received by the City under the Urban Development Action Grant Program established by HUD pursuant to Section 119 of the Housing and Community Development Act of 1974, Pub. L. No. 93-383, as amended, to finance the BRA's Activities.
- (r) "UDAG Grant Agreement" shall mean the Revised UDAG Grant Agreement between HUD and the City executed by HUD on September 8, 1986 and executed by the City on September 15, 1986.
- (s) "UDAG Grant Funds" shall mean the funds to be provided by HUD to the City pursuant to the terms of the UDAG Grant Agreement.

Section 2: Developer's Activities

- (a) Developer shall after July 7, 1982 extensively rehabilitate into office and retail space an approximately 70,089 gross square foot building known as Building 36 located in

Charlestown Navy Yard at an approximate total cost of \$5,705,274 in private funds (exclusive of canopy).

- (b) Developer shall on or after December 27, 1984 lease the land on which Building 36 is located from the BRA.
- (c) Developer shall after July 7, 1982 provide \$509,274 in equity funds to partially finance the development activities set forth in subsection (a) above.

Section 3: BRA's Activities

- (a) The BRA shall construct the following public safety park improvements in Shipyard Park adjacent to Building 36 in the Charlestown Navy Yard, as outlined in the Application, with \$711,000 of UDAG Grant Funds, \$560,439 of Coastal Facilities Improvement Program funds, and \$795,256 of Recipient's Capital Loan Order monies.

Demolition	\$ 265,260
Dry Dock #2 Improvements	10,380
Paving	1,081,410
Handrail	30,000
Lighting, Trees, Grates, etc.	398,926
Utilities	19,740
Miscellaneous	<u>260,979</u>
TOTAL	\$2,066,695

- (b) The BRA may use up to \$50,000 of UDAG Grant Funds for administrative costs associated with the UDAG Grant.

(c) The BRA shall lease the land on which Building 36 is located to the Developer. The terms and conditions of the lease shall be in conformance with the terms and conditions set forth in Paragraph V of Exhibit E of the UDAG Grant Agreement.

Section 4: Timeframe for Performance

The Developer and the BRA shall commence and complete their respective activities in accordance with the following schedule:

<u>Activity</u>	<u>Commencement Date</u>	<u>Completion Date</u>
Rehabilitation of Building 36	January 31, 1985	June 30, 1988
Park Improvements	August 31, 1987	August 31, 1988

Section 5: Assurance of Governmental Approvals

The BRA and the Developer have obtained, or have reasonable assurance that they will obtain all Federal, State and local governmental approvals and reviews required by law to be obtained by the BRA and the Developer, respectively, for the Project.

Section 6: Completion of Project

The Developer acknowledges that the Secretary, in selecting the City for the award of the UDAG Grant, relied in material part upon the assured completion of the Project and that the Developer assures the BRA that the Developer's Activities will be completed by the Developer, subject to obtaining tenants for space in Building 36.

Section 7: Assurances of Projected Jobs

The Developer will use its best efforts to create or cause to be created by June 30, 1988 the following numbers of jobs:

(a) Total New Permanent Jobs: 122

(b) Total New Permanent Jobs
for Low- and Moderate-
Income Persons: 55

(c) Total New Permanent Jobs
for Minorities: 25

Section 8: Books and Records

The Developer shall keep and maintain, and shall give access to the BRA and its representatives, and any duly authorized representative of the Secretary or Comptroller General of the United States, at all reasonable times, to inspect, copy, and audit, and examine all books, records, accounts and other documents relating to the Project, including those relating to the costs of construction, rehabilitating, and equipping the Project Improvements, and to hiring until the completion of all close-out procedures respecting the UDAG Grant and the final settlement and conclusion of all issues arising out of the UDAG Grant.

Section 9: Reports

The Developer shall cooperate with the BRA and the City in preparing in a timely manner all reports required to be filed in connection with the UDAG Grant and in accordance with any directives of HUD or any statute, rule or regulation of HUD.

During the term of the UDAG Grant Agreement and the UDAG closeout agreement to be entered into by HUD and the City, the Developer agrees to provide necessary data and information as to private investment and jobs relating to the UDAG Grant.

Section 10: Access to Project

The BRA and the Developer shall agree that any duly authorized representative of the City and/or the Secretary shall, at all reasonable times, have access to any portion of the Project until the completion of all close-out procedures respecting the UDAG Grant.

Section 11: Disclaimer of Relationships The Developer

acknowledges that nothing contained in the UDAG Grant Agreement, the Transfer Agreement, or this Development Agreement, nor any act of the Secretary, the City, the BRA, or the Developer shall be deemed or construed by any of the parties, or by third persons, to create any relationship of third-party beneficiary, principal and agent, limited or general partnership, or joint venture, or of any association or relationship involving the Secretary.

Section 12: Limitation of the City's and BRA's Liability for Project Activities

- (a) The Developer acknowledges that the City shall not be liable to the Developer, or any party except HUD and the BRA, for completion of, or failure to complete, any activities which are a part of the Project.
- (b) The Developer acknowledges that the BRA shall not be liable to the Developer, or to any party except HUD and the City, for completion of, or failure to complete, any activities which are a part of the Project, except the BRA's Activities to the extent that the BRA receives the UDAG Grant Funds for the financing of said activities from the City.

Section 13: Conflict of Interest

Except for approved eligible administrative and personnel costs, no member, officer, or employee of the City or its designees, or agents, no consultant, no member of the governing body of the City and no other public official of the City, who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure, or who is in a position to participate in a decision-making process or gain insider information with regard to the Project, or any subrecipients under Section 570.204 of Title 24 of the Code of Federal Regulations which are receiving funds hereunder, shall have or obtain any personal or financial interest or benefit, direct or indirect, in any contract or subcontract or the proceeds thereof, for work to be performed in connection with the Project or in any

activity or benefit therefrom, which is part of the Project at any time during or after such person's tenure. This provision shall be in addition to the conflict of interest provisions in Attachment O of OMB Circular A-102 and A-110.

Section 14: Project Signs

The BRA and the Developer shall comply with any project sign criteria which may be established by the Secretary.

Section 15: Compliance with Governmental Regulations

The Developer shall conform to and comply with all applicable restrictions, building codes and zoning ordinances relating to construction of the Project Improvements and with all other applicable statutes, laws, ordinances, rules, executive orders, and regulations of the United States, the Commonwealth of Massachusetts, and the City, and of any other governmental division, board, or officer having or claiming jurisdiction over the Project property or activities.

Section 16: Non-Discrimination

- (a) The Developer shall not discriminate upon the basis of race, color, sex, age, religion, or national origin in the sale, lease, rental, use, or occupancy of Building 36 and the Project Site or any part thereof. The Developer shall after the date of this Development Agreement include the provisions of this Subsection (a) in every lease, license, easement, or other agreement for the use and occupancy of Building 36 and the Project Site, so that such provisions

will be binding on every party thereto. The Developer shall take such action with respect to any such lease, license, easement, or other agreement for use and occupancy as the BRA may direct as a means of enforcing such provision, including sanctions for non-compliance.

- (b) The Developer shall not discriminate against any employee or applicant for employment because of race, color, sex, age, religion or national origin. The Developer shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, sex, age, religion or national origin with respect to employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, selection for training or apprenticeship, and all other aspects of employment. The Developer shall further carry out the requirements of (1) the BRA's "Equal Opportunity Compliance Policy" adopted June 12, 1975, and (2) the "Commonwealth of Massachusetts Equal Employment Opportunity Anti-Discrimination and Affirmative Action Program" dated December 2, 1975, (3) the City's "Supplemental Minority Participation and Resident Preference Section" dated January 7, 1980, and (4) a certain ordinance of the City of Boston entitled "An Ordinance Establishing The Boston Residents Job Policy", passed by the City Council on September 28, 1983 and approved by the Mayor of the City of Boston on October 14, 1983, and the Executive Orders of the Mayor,

respectively dated June 28, 1978, and September 11, 1979, to the extent that the same do not conflict with the beforementioned ordinances which apply to all construction funded, in whole or in part, by the City, or State of Massachusetts, or with UDAG Grant Funds. The Developer shall post in conspicuous places, available to employees and applicants for employment, suitable notices setting forth the provisions of this non-discrimination clause.

- (c) Developer shall require each Contractor to send to each labor union or representative of workers with which Contractor has a collective bargaining agreement or other contract or understanding, a notice to be provided, advising the said labor union or workers' representative of Contractor's commitments under Section 202 of Executive Order #11246 of September 24, 1965, as amended by Executive Order #11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (d) Developer shall require each Contractor to comply with all provisions of Executive Order #11246 of September 24, 1965, as amended by Executive Order #11375 of October 13, 1967, and the rules, regulations and relevant orders of the Secretary of Labor.
- (e) Developer shall furnish all information and reports required by Executive Order #11246 of September 24, 1965, as amended by Executive Order #11375 of October 13, 1967, and by the rules, regulations and orders of the Secretary of Labor

pursuant thereto, and will permit access to Developer's books, records and accounts by the BRA, the Secretary of Housing and Urban Development, and the Secretary of Labor, for purposes of investigation to ascertain compliance with such rules, regulations and orders.

- (f) In the event of Developer's and/or its contractor's noncompliance with the nondiscrimination clauses of this Section 17 or with any of the said rules, regulations or orders, upon written notice to Developer, and the continuance of such noncompliance for sixty (60) days thereafter, Developer and/or its contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order #11246 of September 24, 1965, as amended by Executive Order #11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order #11246 of September 24, 1965, as amended by Executive Order #11375 of October 13, 1967, or by rules, regulations or orders of the Secretary of Labor, or as otherwise provided by law.
- (g) The Developer shall include the provisions of subsection (b) of this Section in every employment contract, whether union or non-union, and in every construction contract and every other contract or purchase order with respect to the Project, and shall require the inclusion of these provisions in every subcontract entered into by any of its contractors, so that such provisions will be binding upon each such contractor, subcontractor, or vendor as the case may be.

The Developer shall take such action with respect to any construction contract, subcontract, or purchase order as the BRA may direct as a means of enforcing such provisions, including sanctions for non-compliance.

- (h) Developer, for itself and its successors and assigns, agrees, to the extent permitted by law, that in all construction activity undertaken with respect to the Project Site, it will pursue the efforts hereinafter described with a goal to employ workers in construction so that the worker hours, on a craft-by-craft basis, shall be performed as follows:

- (a) at least 50% by bona fide City of Boston residents;
- (b) at least 25% by minorities; and
- (c) at least 10% by women.

Such efforts consist of the following:

- (i) The Developer shall incorporate in every general construction contract or construction management agreement an enumeration of the foregoing worker hour goals and shall impose a responsibility upon the contractor to pursue the efforts enumerated in this Paragraph and to incorporate such worker hour goals in all subcontracts and impose upon all subcontractors the obligation to pursue such efforts;
- (ii) Each of the BRA, the Developer, the contractor, and each subcontractor shall designate an individual to serve as affirmative action officer for the purpose of carrying out the efforts to achieve

worker hour goals set forth herein;

- (iii) Contemporaneously with the start of construction, the affirmative action officers and other interested representatives of the BRA, the Developer, the contractor, and each subcontractor then selected shall hold a pre-job conference with appropriate union representatives of the construction trade unions and other persons responsible for referring construction workers to the job, for the purpose of reviewing the worker hour goals applicable to the Project and the manning requirements for construction activity over the life of the construction period;
- (iv) Each request for qualified construction workers made by any person involved in the construction of the Project shall contain a recitation of such worker hour goals and a request that qualified referees for construction positions on the Project be selected in the same proportion as such goals; provided, however, that if at the time of any such manning request the requesting party's workforce composition falls short of any one or more of such goals, such manning request shall seek qualified referees in such proportion among such categories as would be necessary to more fully achieve such goals. In the event that the person, entity, or union hiring hall or business agent to which or whom such a manning request has been submitted

fails to comply with such request, the affirmative action office of such requesting party shall seek to verify that insufficient workers in the categories specified in such request are then shown on the unemployed list maintained by such person, entity, union hiring hall or business agent by seeking to obtain an affidavit from the appropriate person, entity, union hiring hall representative or business agent to such effect. Copies of any affidavit so obtained shall be forwarded to the affirmative action office of the BRA.

- (v) All persons applying directly to the contractor, or subcontractor for employment in construction on the Project who are not employed by the party to whom application is made will be referred to the affirmative action officer of the BRA and a written record of such referral shall be made, a copy of which shall be sent to such officer; and
- (vi) Each of the Developer, the contractor, and each subcontractor shall maintain records reasonably necessary to ascertain compliance with the requirements of this Paragraph for at least one year after the completion date and will make the same available for inspection by the BRA upon reasonable notice.

Section 17: Compliance with Terms of UDAG Grant Agreement

The Developer shall observe and perform all of the provisions of the UDAG Grant Agreement pertaining to the Developer as a "participating party" thereunder, not specifically referred to herein, all of which provisions are incorporated herein by reference as if fully set forth herein.

Section 18: Assignment

The Developer shall not assign or in any way transfer its interest or rights in this Development Agreement without the prior written consent of the BRA.

Section 19: Successors Bound

The provisions of this Agreement shall be binding upon, and shall inure to the benefit of, the successors and assigns of the Developer and the public body or bodies succeeding to the interests of the BRA.

Section 20: Notices

Any notice or other communication required or permitted hereunder shall be deemed satisfactorily given upon depositing the same in writing in the United States mail by postage prepaid, registered or certified mail, addressed (1) if to the Developer, to Incubator Associates, One Longfellow Place, Boston, Massachusetts 02114, c/o Jerome Rappaport, and (12) if to the BRA, to Director, Boston Redevelopment Authority, One City Hall Square, Boston, Massachusetts 02201, with a copy to Chief General Counsel,

Boston Redevelopment Authority, One City Hall Square, Boston, Massachusetts 02201, or at such other address as the Developer or the BRA may designate in writing.

Section 21: Severability

Each and every covenant and agreement contained in this Development Agreement is and shall be construed to be a separate and independent covenant and agreement. If any term or provision of this Development Agreement or the application thereof to any person or circumstances shall to any extent be invalid and unenforceable, the remainder of this Development Agreement or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Development Agreement shall be valid and shall be enforced to the full extent permitted by law.

Section 22: Amendment

This Development Agreement may be amended only by a written agreement executed by the Developer and the BRA. In addition, during the term of the UDAG Grant Agreement, this Development Agreement shall not be amended in any material respect after submission to and approval by the Secretary, without the prior written approval of the Secretary. "Material" shall be defined as anything which cancels or reduces the developmental, construction, job creating or financial obligation of the BRA and/or the Developer by more than ten percent (10%), changes the

sites or character of any development activity, or increases any time for performance by the BRA and/or the Developer by more than thirty (30) days.

Section 23: Section Titles

The titles of the several sections of this Development Agreement are not a part of the Development Agreement and shall not be deemed to affect the meaning or construction of any of its provisions.

Section 24: Governing Law

The partnership ("Developer") shall be obligated under the terms of this Development Agreement according to the laws of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the parties hereto have caused this
Development Agreement in two (2) counterparts to be signed,
sealed, and delivered as of the date first written above.

INCUBATOR ASSOCIATES

By: _____

APPROVED AS TO FORM:

BOSTON REDEVELOPMENT AUTHORITY

Chief General Counsel
Boston Redevelopment
Authority

By: _____
Stephen Coyle, Director

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

, 1987

On this date the above-named _____
appeared before me and executed the foregoing Development
Agreement on behalf of the said partnership and acknowledged the
same to be the free act and deed of the said partnership.

Notary Public
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

, 1987

On this date the above-named Stephen Coyle, Director, Boston
Redevelopment Authority, appeared before me and executed the
foregoing Development Agreement on behalf of the said Authority
and acknowledged the same to be the free act and deed of the said
Authority.

Notary Public
My commission expires:



BOSTON REDEVELOPMENT
AUTHORITY
DIRECTOR'S OFFICE

JUN 2 4 44 PM '88

U.S. Department of Housing and Urban Development

Boston Regional Office, Region I
Boston Federal Building, 3rd Floor
10 Causeway Street
Boston, MA 02222-1092

MAY 24 1988

Mr. Stephen Coyle, Director
Boston Redevelopment Authority
City Hall Plaza
Boston, MA 02201

Dear Mr. Coyle:

SUBJECT: Urban Development Action Grant Program
Project B-80-AA-25-0090
Navy Yard Retail

The purpose of this letter is to advise you that we have recommended to HUD Washington that the above project be terminated.

The reason for this action is that the evidentiary materials for this project were due in March 1987 and have not yet been submitted.

The overdue evidentiary materials were the subject of our monitoring letter of November 24, 1987 and a follow-up letter of February 23, 1988. However, the materials have not yet been submitted and apparently the BRA and Developer have made little progress in settling differences which are delaying the submission.

In addition, the Developer has long since completed rehabilitation of Building 36 and the building is tenanted. All that remains of the project is the BRA-funded public improvements and those improvements are underway utilizing non-UDAG funds.

The facts have led us to conclude that the UDAG is not necessary to complete this project and we have recommended termination.

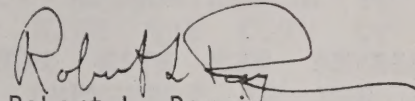
If the evidentiary materials are submitted before the effective date of the termination, we may reconsider our recommendation.

880603-002

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If you have any questions, please contact Karen Malfy at 565-5354.

Very sincerely yours,



Robert L. Paquin
Deputy Director
Office of Community
Planning and Development

cc: Janet Carlson
Billings Building #3
Charlestown Shipyard
Boston, MA 02109

JUNE 9, 1988

Taken under advisement May 21, 1987

TO: BOSTON REDEVELOPMENT AUTHORITY AND
STEPHEN COYLE, DIRECTOR

FROM: JOHN R. LEIGH, ASSISTANT DIRECTOR
JAMES F. ENGLISH, DEPUTY DIRECTOR
HARBOR PLANNING AND DEVELOPMENT
JANET CARLSON, ASSISTANT GENERAL COUNSEL

SUBJECT: CHARLESTOWN NAVY YARD: AUTHORIZATION TO EXECUTE
A TRANSFER AGREEMENT WITH THE CITY OF BOSTON,
A DEVELOPMENT AGREEMENT WITH THE DEVELOPER OF
BUILDING 36, AND AN AMENDMENT TO THE BUILDING
36 LEASE FOR THE SHIPYARD PARK UDAG PROJECT.

SUMMARY: Memorandum requesting that the Director be
authorized to execute the necessary documents
required by the U.S. Department of Housing and
Urban Development (HUD) to obtain the release
of \$761,000 in UDAG Funds for the remaining
construction of Shipyard Park.

On July 7, 1982 an Urban Development Action Grant (UDAG No. B-80-AA-25-0090 (7)), in the amount of \$761,000, was granted preliminary approval by the U.S. Department of Housing and Urban Development (HUD) for the Shipyard Park Project. The UDAG project consists of the renovation of Building 36 into office and retail space, at a total development cost of \$5,705,274, and the construction of public park improvements at Shipyard Park within the Charlestown Navy Yard. The developer for the renovation of Building 36 is Incubator Associates, a Massachusetts general partnership.

A UDAG Grant Agreement was executed by HUD on September 8, 1986 and by the City of Boston on September 15, 1986. The UDAG Grant Funds will be used to partially finance the public safety park improvements in Shipyard Park. City of Boston Capital Loan Order monies and Coastal Facilities Improvement Program funds will also be used to finance the additional park improvements.

The renovation of Building 36 is virtually complete, and is over 90% leased. Through the use of funds presently available from the aforementioned sources, some improvements to Shipyard Park are already underway at this time. These improvements are being constructed by the John McCourt Company, at a cost of \$1,378,705.50. If the Authority is able to obtain the release of the requested UDAG funds, additional improvements, for which no other funds presently exist, will be undertaken within the Shipyard Park Project.

In order to obtain the release of such funds it is necessary to submit evidentiary materials required under the UDAG Grant Agreement. Among the materials that are required are a Transfer Agreement with the City of Boston, a Development Agreement with the Developer, and an amendment to the Building 36 Lease. The terms of these documents are set forth in Exhibit E of the UDAG Grant Agreement.

On May 21, 1987, a memorandum was submitted to the BRA Board requesting that the Authority authorize the Director to execute such documents. However, the developer, had added the following provision which the Authority objected to:

"The obligations contained herein to be performed by the Developer are hereby the obligations of the Partnership, and no individual partner shall be personally liable on account thereof."

The minutes of the May 21, 1987 Board Meeting state that the Authority voted to strike this language and insert language to the effect that the Partnership shall be obligated under the terms of this Development Agreement according to the laws of the Commonwealth of Massachusetts. The Board took the matter under advisement until such time as the developer agreed to execute the documents as requested.

The developer has now agreed to execute the Development Agreement with his original language deleted and the Authority's revised language inserted. Copies of the documents are attached for your review (see page 20 - 24). The Lease was not similarly revised as it was executed in 1984 with language which limited partnership liability to the project.

Therefore, it is recommended that the Director be authorized to execute a Transfer Agreement with the City of Boston, a Development Agreement with the developer, an amendment to the Building 36 Lease, and any other documents that may be required by the U.S. Department of Housing and Urban Development to effectuate the release of the aforementioned UDAG funds.

An appropriate vote follows:

VOTED: That the Director be, and hereby is authorized, in accordance with the terms and conditions of a certain Urban Development Action Grant No. B-80-AA-25-0090 (7), as amended and/or revised, to execute and deliver on behalf of the Boston Redevelopment Authority a Transfer Agreement with the City of Boston in substantially the form attached hereto, a Development Agreement with Incubator Associates in substantially the form attached hereto, an amendment to the Building 36 Lease in substantially the form attached hereto, and any other documents that may be required by the U.S. Department of Housing and Urban Development to effectuate the release of the UDAG Grant Funds.

AMENDMENT
TO
INDENTURE OF LEASE
BOSTON REDEVELOPMENT AUTHORITY
TO
INCUBATOR ASSOCIATES
OF
BUILDING 36
CHARLESTOWN NAVY YARD
BOSTON, MASSACHUSETTS

This Amendment is made this _____ day of October, 1986, by and between the BOSTON REDEVELOPMENT AUTHORITY, a public body politic and corporate, organized under the laws of the Commonwealth of Massachusetts (hereinafter together with any successors or assigns permitted or authorized by the Lease called "Lessor"), and Incubator Associates, a Massachusetts Partnership (hereinafter together with any successors or assigns permitted or authorized by the Lease called "Lessee").

WHEREAS, Lessor and Lessee entered into a lease of the land with the building thereon known as Building 36, Charlestown Navy Yard (hereinafter referred to as the "Lease");

WHEREAS, a Revised UDAG Grant Agreement was executed by HUD on September 8, 1986 and by the City of Boston on September 15, 1986; and

WHEREAS, Exhibit E of the Revised UDAG Grant Agreement requires that changes be made to the Lease;

NOW, THEREFORE, for and in consideration of the rents, conditions and agreements provided in the Lease, Lessor and Lessee agree as follows:

1. Definition of Secretary

Section 2.01 of the Lease shall be amended by adding the following definition of Secretary after the definition of Retail Tenant:

"Secretary" shall mean the Secretary of Housing and Urban Development or any other official of the United States Department of Housing and Urban Development to whom the Secretary has delegated authority to act with respect to matters covered by the UDAG Grant Agreement.

2. Definition of UDAG Grant Agreement

Section 2.01 of the Lease shall also be amended by adding the following definition of UDAG Grant Agreement at the end thereof:

"UDAG Grant Agreement" shall mean the UDAG Grant Agreement executed by HUD on September 8, 1986 and by the City of Boston on September 15, 1986.

3. Sale/Refinancing of Project and/or Termination of the Lease and Prepayment

Article VI of the Lease shall be amended by adding at the end thereof the following new sections 6.07 and 6.08:

Section 6.07: Sale/Refinancing of Project and/or Termination of the Lease. Upon the sale, partial sale, refinancing, exchange, transfer, sale under foreclosure, or other disposition of Property and/or the termination of the Lease, Lessee shall pay to the BRA an amount equal to the principal and interest that would have been paid as of the date of acceleration on a loan of \$571,000 at 9.58% interest per annum for thirty (30) years if said loan had commenced on December 27, 1984 and was paid on a monthly basis plus the outstanding principal remaining to be paid on the date of acceleration less the total of the Parking Rent payments that have been made as of the date of acceleration.

Section 6.08: Prepayment. Prepayment of the Parking Rent may occur at any time. Such prepayment shall be made by the payment by Developer to the BRA of an amount equal to the principal and interest that would have been paid as of the date of the prepayment on a loan of \$571,000 at 9.58% interest per annum for thirty (30) years if said loan had commenced on December 27, 1984 plus the outstanding principal remaining to be paid on the date of prepayment less the total of the Parking Rent payments that have been made as of the date of prepayment.

4. Modification

Section 18.12 of the Lease shall be amended by adding at the end thereof the following language:

In addition, during the term of the UDAG Grant Agreement, this Lease shall not be amended in any material respect after submission to and approval by the Secretary, without the prior written approval of the Secretary. "Material" shall be defined as anything which cancels or reduces the developmental, construction, job creating or financial obligation of Lessor and/or Lessee by more than ten percent (10%), changes the sites or character of any development activity, or increases any time for performance by Lessor and/or Lessee by more than thirty (30) days.

5. Consistency

The Lease shall in all other respects remain unchanged and in full force and effect.

6. Section Titles to be Disregarded

The titles of the sections of this Amendment are for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Amendment.

IN WITNESS of this instrument, the parties have caused this Amendment to be executed by their duly authorized officers and their respective corporate seals to be hereto affixed as of the day and year first written above.

Approved as to Form:

BOSTON REDEVELOPMENT AUTHORITY

Chief General Counsel
Boston Redevelopment
Authority

By: _____
Stephen Coyle, Director

INCUBATOR ASSOCIATES

By: _____

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

, 1986

Then personally appeared the above-named Stephen Coyle, Director of the Boston Redevelopment Authority, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of the Boston Redevelopment Authority, before me,

Notary Public

My Commission expires:

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

, 1986

Then personally appeared the above-named _____ of Incubator Associates, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of Incubator Associates, before me.

Notary Public

My Commission expires:

